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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/109,830	07/20/98	KENNELLY	J KE27-001

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QM12/1222

EXAMINER

DEXTER, C

ART UNIT	PAPER NUMBER
	3724

DATE MAILED:

12/22/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>09/109,830</b>	Applicant(s) <b>Kennelly et al.</b>
	Examiner <b>Clark F. Dexter</b>	Group Art Unit <b>3724</b>

Responsive to communication(s) filed on Nov 24, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-18 is/are pending in the application.

Of the above, claim(s) 5, 6, 13, 14, and 18 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-4, 7-12, and 15-17 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election with traverse of group I (claims 1-4, 7-12 and 15-17) in the response filed November 24, 1999 (paper no. 4) is acknowledged. The traversal is on the ground(s) that the restriction is improper for various reasons. This is not found persuasive for the following reasons.

In the paragraph bridging pages 1-2 of the response, applicants argue that the restriction is improper per se because the individual groups include the same claims, and that the common claims cannot be distinct from the same claim in another group (e.g., claim 1 in group I cannot be distinct from claim 1 in group II). The Examiner agrees. However, claim 1 and the other common claims define common subject matter. Technically, these claims are not part of any one group but are common to all groups as listed. The groups define different patentably distinct subcombinations, wherein the common claims will be examined upon election of one of the subcombinations.

In the second paragraph on page 2 of the response, applicants appear to argue that the claims do not define species, and that a species election is not proper. The Examiner agrees. No such species restriction has been made. Rather, the restriction is directed to subcombinations useable together.

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In the third paragraph on page 2 of the response, Applicants argue that examining all of the claims should not create an undue burden on the Examiner, and that restricting the claims into four separate applications would create a severe burden on the Applicant. The Examiner respectfully disagrees that examining all of the claims would not create an undue burden. Rather, the examination of multiple inventions (i.e., subcombinations) in the time allotted for a single invention creates an undue burden on the Examiner, particularly since multiple inventions results in multiple fields of search and multiple scopes of invention leading to multiple patentability considerations. However, to relieve Applicants' burden, Applicants may state that one or some of the groups are not patentably distinct and the claims directed to this group or these groups will also be examined. It is noted, however, that such a statement may be used as an admission of obviousness and may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Further, Applicants are reminded that if claims 3 or <sup>11</sup>~~4~~ as originally filed are determined to be patentable, rejoinder of the claims depending therefrom will be favorably considered. ↙

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 5, 6, 13, 14 and 18 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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### *Drawings*

3. The drawings are objected to because a numeral (e.g., 31') should be added to Figure 1 to indicate the slots described on page 13, line 9 for clarity.

In Figure 2, the rightmost occurrences of "40" and "41" should be changed to --40'-- and --41'-- for clarity.

In Figure 4, numeral 53 occurs twice (they're next to each other), and it seems that the rightmost occurrence should be deleted.

Correction, as appropriate, is required.

### *Specification*

4. The disclosure is objected to because of the following informalities:

On page 6, lines 2-3, the figures as indicated appear to be reversed, and it seems that in line 2, "5" should read --8--, and in line 3, "8" should read --5--.

On page 7, line 9, "42" appears to be incorrect, and it seems that it should read to --41--; in line 11, it seems that "a" should be deleted; in line 14, "chain" should be plural.

On page 8, line 12, --40', 41'-- should be inserted after "sprockets" for clarity.

On page 10, line 7, a numeral should be inserted after "way" (and added to the drawings) ↙ ↘ for clarity.

On page 12, line 24, -- , 40' -- should be inserted after "40" for clarity.

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On page 13, line 2, -- , 41' -- should be inserted after "41" for clarity; in line 9, --30'-- should be inserted after "slots" for clarity.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. Claims 1, 2, 3, 4, 7-12 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 3-4, "configured for attachment" is vague and indefinite as to how the members are "configured"; in line 9, "configured to permit" is vague and indefinite as to how the lugs are "configured".

In claim 2, line 4, "configured to secure" is vague and indefinite as to how the locking mechanism is "configured".

In claim 3, lines 2-3, "configured to be mounted" is vague and indefinite as to how the brackets are "configured"; in lines 6-7, "a working flight" is vague and indefinite as to what disclosed structure it refers (it is noted that the specification and drawings should include a clear indication of the working flight); in lines 12-13, "in such a manner that ... lifted from the chains" is vague and indefinite since sufficient structure has not been set forth to perform the recited function, and since it is not clear as to what structure is inferred by "in such a manner"; in line 15,

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structural cooperation is lacking for "a locking mechanism"; also in line 15, "configured to secure" is vague and indefinite as to how the locking mechanism is "configured".

In claim 4, line 3, "between" renders the claim vague, particularly regarding the structural relationship between the lug adjustor, the cutting guide and one of the aligning lugs, and it seems that "between" should be changed to --to-- or the like; in line 4, "configured to adjustably position" is vague and indefinite as to how the lug adjustor is "configured".

In claim 8, line 4, it seems that -- ; and -- should be inserted after "therein" or the like.

In claim 9, line 8, "configured to adjust" is vague and indefinite as to how the lug adjustor is "configured".

In claim 10, line 4, "or" renders the claim vague as to what is being set forth; in line 5, "configured to selectively shift" is vague and indefinite as to how the lug adjustor is "configured".

In claim 11, line 1, it is not clear as to what recited structure is part of the fence and what structure is part of the cutting table, and it seems that "and" should be changed to --on a-- for clarity; in line 11, "a working flight" is vague and indefinite as to what disclosed structure it refers; in lines 21-22, "configured in such a manner that ... lifted from the chains" is vague and indefinite since sufficient structure has not been set forth to perform the recited function, and since it is not clear as to what structure is inferred by "configured in such a manner" and/or how the aligning lugs are configured; in line 24, structural cooperation is lacking for "a locking mechanism"; also in line 24, "configured to secure" is vague and indefinite as to how the locking mechanism is "configured".

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In claim 12, line 3, "between" renders the claim vague, particularly regarding the structural relationship between the lug adjustor, the cutting guide and one of the aligning lugs, and it seems that "between" should be changed to --to-- or the like; in line 4, "configured to selectively position" is vague and indefinite as to how the lug adjustor is "configured".

In claim 17, line 5, "configured to secure" is vague and indefinite as to how the first aligning lug is "configured"; in line 6, it seems that a comma --,-- is missing after "chains"; in line 8, "between" renders the claim vague, particularly regarding the structural relationship between the lug adjustor, the cutting guide and the second aligning lug, and it seems that "between" should be changed to --to-- or the like; in line 4, "configured to selectively position" is vague and indefinite as to how the lug adjustor is "configured".

***Prior Art***

6. Further consideration of the claimed invention with respect to the prior art will be given upon clarification of the claimed invention.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703)308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.

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Communications via Internet e-mail regarding this application, other than those under 35 USC 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [rinaldi.rada@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 USC 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark Office on February 25, 1997 at 1195 OG 89.



Clark F. Dexter  
Primary Examiner  
Art Unit 3724

cfd  
December 20, 1999